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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CARLA CLENNEY-MARTINEZ, Plaintiff and Appellant, v. EVERARDO MIRAMONTES et al., Defendants and Respondents.	B288398 (Los Angeles County Super. Ct. No. BC455989)

APPEAL from a judgment of the Superior Court of Los Angeles County, Randolph M. Hammock, Judge. Affirmed.

Gomez & Simone, Josué Cristóbal Guerrero, for Plaintiff and Appellant.

Fidelity National Law Group, Kevin B. Broersma, for Defendants and Respondents Cynthia M. Tirado and

Richard A. Garcia, as trustees of the Garcia Tirado Family Trust.

Everardo Miramontes, in pro. per., for Defendant and Respondent.

Plaintiff and appellant Carla Clenney-Martinez appeals from a judgment in favor of defendants and respondents Richard A. Garcia and Cynthia M. Tirado, individually and as trustees of the Garcia Tirado Family Trust, in this action arising out of a deed of trust and promissory note.[1] On appeal, Clenney-Martinez contends: (1) the evidence showed the deed of trust that she executed was void, and therefore, the trial court should have found in her favor on her claims for wrongful foreclosure, cancellation of the instrument, and quiet title, and (2) the terms of the loan violated various provisions of Financial Code sections 4970 and 4973.[2] We conclude that substantial evidence supports the trial court's findings that the deed of trust was not forged or materially altered without Clenney-Martinez's authorization, and the transaction was not a "covered loan" under the provisions of the Financial Code. Therefore, we affirm.

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[1] Clenney-Martinez raises no issues on appeal with respect to any defendant other than Garcia and Tirado.

[2] All further statutory references are to the Financial Code unless otherwise stated.

FACTS

In November 2007, Clenney-Martinez was several months behind in payments on the mortgage for her home, certain real property that she owned in Crestline, California, and a foreclosure sale was set for January 9, 2008. Around this time, her father gave her a property on Redwood Avenue in Los Angeles as a gift, which Clenny-Martinez then owned free and clear as of November or December 2007.

In January 2008, Clenney-Martinez filled out a loan application with New Haven Financial, Inc., which was a loan broker. The application identified the loan as against the Redwood Avenue property and Clenny-Martinez's present address as the Crestline property.

On January 10, 2008, Clenney-Martinez, as the borrower, executed a deed of trust on the Redwood Avenue property in Los Angeles. The deed of trust stated that it was made "among the Trustor, Carla L. Clenney, a Married Woman as her Sole and Separate Property (herein "Borrower"), New Haven Financial, Inc. (herein "Trustee"), and the Beneficiary, (See Exhibit Attached for Beneficiary Vesting(s)), (herein "Lender")." The deed of trust secured a loan of $375,000. No exhibit was attached to the deed of trust listing the beneficiary.

The promissory note for the loan stated that Clenney-Martinez promised to pay $375,000, plus interest, "to the order of (See Exhibit Attached for Beneficiary Vesting(s)), (who will be called 'Lender'). I understand that the Lender

may transfer this Note. The Lender or anyone else who takes this Note by transfer and who is entitled to receive payments under this Note will be called the 'Note Holder(s).'" The note also stated that Clenney-Martinez would make payments of interest only, at an interest rate of 12.5 percent, until the full payment was due on February 1, 2011. No exhibit was attached that listed the beneficiary. Clenney-Martinez executed the note on January 10, 2008.

The escrow instructions stated, "COMPANY, as escrow holder, is authorized by LENDER and BORROWER to: (a) insert or attach to the deed(s) of trust executed by BORROWER the correct legal description of the PROPERTY as provided by the title insurer/underwritten agent that offers to provide title insurance; (b) insert the name of the LENDER, first payment date and maturity date in any promissory note, deed of trust or other DOCUMENT executed when such information was blank and provide BORROWER with a copy of the completed DOCUMENT before close of escrow . . . ." The two lines for the lenders' signatures on the escrow instructions were blank when Clenney-Martinez executed the document. The signature lines referred to an attached exhibit for beneficiary vesting, but no exhibit was attached.

New Haven was required by law to solicit three loan proposals for the investment. New Haven contacted Garcia, who is a real estate broker. Garcia and his wife Tirado had made some prior investments with New Haven and learned to protect themselves through a first deed of trust. Garcia

and Tirado agreed to pay $375,000 to New Haven in exchange for a first deed of trust on the Redwood Avenue property. The interest rate was 12.5 percent.

On January 24, 2008, New Haven sent a letter to Garcia and Tirado providing a disclosure statement, servicing agreement, and escrow instructions for their signatures. The letter requested that they send a check payable to New Haven in the amount of $375,000.

On the escrow instructions, the lines for the lender's signatures had Garcia and Tirado's names typed below the signature lines. The promissory note stated that Clenney-Martinez promised to pay $375,000, plus interest, "to the order of Richard A. Garcia and Cynthia M. Tirado, husband and wife as joint tenants as in an undivided 100.000% interest, (who will be called 'Lender'). I understand that the Lender may transfer this Note. The Lender or anyone else who takes this Note by transfer and who is entitled to receive payments under this Note will be called the 'Note Holder(s).'" The signature page reflected that Clenney-Martinez executed the note on January 10, 2008.

The recorded deed of trust stated that it was made "among the Trustor, Carla L. Clenney, a Married Woman as her Sole and Separate Property (herein "Borrower"), New Haven Financial, Inc. (herein "Trustee"), and the Beneficiary, Richard A. Garcia and Cynthia M. Tirado, husband and wife as joint tenants as to an undivided 100.000% interest, (herein "Lender")."

Garcia and Tirado paid $375,000 to New Haven on January 28, 2008. New Haven kept approximately $30,000 in payment of costs and fees, and transferred $345,000 to Clenney-Martinez. She kept $70,000 and loaned the remaining $270,000 to Everardo Miramontes to finance new construction on a property that he owned on Kinnard Avenue in Los Angeles.[3] In an agreement dated February 2, 2008, Everardo and his company Age of Technology Mortgage & Realty agreed to make the payments due on the Redwood Avenue loan until it could be paid in full through the sale of the Kinnard property.

Clenney-Martinez did not use any of the loan proceeds that she received to pay the arrears on the Crestline property or to redeem the Crestline property. The Crestline property was sold at a foreclosure sale in January or February, 2008. When Clenny-Martinez initially moved out of Crestline, she rented a residence, as the condition of the Redwood property was such that she could not live there.

At the time of the transactions in 2008, Clenney-Martinez and her husband, Christopher Martinez, were separated, and he was living with his mother in Cathedral City. Martinez was unaware of, and not involved in, the transactions entered in 2008. At the end of 2008 or beginning of 2009, Clenney-Martinez and her husband reconciled and lived together at the Redwood Avenue

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[3] Because more than one participant shares the last name Miramontes, they will be referred to individually by their first names for ease of reference.

property. He first became aware of the transactions with Everardo and New Haven in 2009, when Clenney-Martinez filed a lawsuit against Everardo. Clenney-Martinez and the Miramontes settled the lawsuit through an agreement in August 2009 that gave Clenney-Martinez a deed of trust on the Kinnard property to secure payment of $375,000 at 6 percent interest. The Miramontes both signed the promissory note for the settlement agreement and the deed of trust. Everardo intended to refinance or sell his property to pay Clenney-Martinez. The Kinnard property was foreclosed upon in April 2012, and Clenney-Martinez's junior lien was wiped out.

PROCEDURAL HISTORY

Clenney-Martinez filed this action on February 25, 2011. On March 16, 2015, Clenney-Martinez and her husband filed a fifth amended complaint against several defendants, including Garcia and Tirado, individually and as trustees of the Garcia Tirado Family Trust, Everardo, Mirna, Age of Technology, and New Haven. The causes of action remaining against Garcia and Tirado at the time of trial were for violation of section 4970, declaratory relief, wrongful foreclosure, rescission, and quiet title.

A three-day bench trial began on September 19, 2017. At the conclusion of Clenney-Martinez's presentation of her case-in-chief, Garcia and Tirado moved for judgment under Code of Civil Procedure section 631.8. The trial court

granted the motion. The court found Garcia had been a credible witness. He was a bona fide encumbrancer who lent money in good faith. There was no evidence that Garcia or Tirado knew or should have known of any fraudulent activities with respect to the transactions that they were involved in, including the foreclosure. The deed of trust was executed by Clenney-Martinez, notarized, and not invalid. With respect to the other causes of action, the court found no evidence that Garcia or Tirado were involved in the initial transactions. The court also found that Clenney-Martinez's husband lacked standing to pursue the claims.

At the conclusion of the trial, the court allowed Clenney-Martinez to amend the complaint to conform to proof to allege a cause of action against the Miramontes for breach of the 2009 settlement agreement. The court found the agreement had been breached. The court also found that Clenney-Martinez met her burden to show fraud as against Everardo, but not his wife. The court found that Everardo acted as a fiduciary with respect to Clenney-Martinez and breached his fiduciary duty. The court also found that Clenney-Martinez established violation of section 4970 by Everardo based on his responsibility as a broker to conduct transactions with proper licenses and disclosures.

On November 14, 2017, the trial court entered judgment in favor of Clenney-Martinez against Everardo on the claims for fraud, breach of fiduciary duty, and violation of section 4970, and against both Miramontes on the claim for breach of contract. The court awarded total damages of

$375,000. The court entered judgment in favor of Garcia and Tirado on the remaining claims. Clenney-Martinez filed a timely notice of appeal from the judgment.

DISCUSSION

Standard of Review

"If the trial court determines at the conclusion of the plaintiff's case-in-chief that the plaintiff has failed to meet the burden of proof, Code of Civil Procedure section 631.8 allows the court to forgo the need for the defendant to present evidence. (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 549.) 'The substantial evidence standard of review applies to judgment given under Code of Civil Procedure section 631.8; the trial court's grant of the motion will not be reversed if its findings are supported by substantial evidence. [Citation.] Because section 631.8 authorizes the trial court to weigh evidence and make findings, the court may refuse to believe witnesses and draw conclusions at odds with expert opinion. [Citation.]' (*Id.* at pp. 549–550.)" (*Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 658.)

"We apply the substantial evidence standard of review to a judgment entered under Code of Civil Procedure section 631.8, reviewing the record in the light most favorable to the judgment and making all reasonable inferences in favor of the prevailing party . . . . (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73

Cal.App.4th 517, 528.) We will not reverse the trial court's order granting the motion if its findings are supported by substantial evidence, even if other evidence in the record conflicts. (*Roth v. Parker*, *supra*, 57 Cal.App.4th at pp. 549–550.)" (*Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1263.)

Deed of Trust was not Void

Clenney-Martinez contends the trial court's finding that the deed of trust was valid is not supported by substantial evidence. Specifically, she asserts that the deed of trust was void, thereby rendering the foreclosure sale fraudulent, because the names of the lenders were not provided at the time that she signed the deed of trust but instead were added prior to recording. We disagree.

"A wrongful foreclosure is a common law tort claim. It is an equitable action to set aside a foreclosure sale, or an action for damages resulting from the sale, on the basis that the foreclosure was improper. [Citation.] The elements of a wrongful foreclosure cause of action are: "'(1) [T]he trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was

excused from tendering.'" [Citation.] '[M]ere technical violations of the foreclosure process will not give rise to a tort claim; the foreclosure must have been entirely unauthorized on the facts of the case.' [Citation.] '[A]ll proximately caused damages may be recovered.' [Citation.]" (*Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 561–562.)

"'A deed is void if the grantor's signature is forged or if the grantor is unaware of the nature of what he or she is signing. [Citation.] A voidable deed, on the other hand, is one where the grantor is aware of what he or she is executing, but has been induced to do so through fraudulent misrepresentations. [Citation.]' (*Schiavon v. Arnaudo Brothers* (2000) 84 Cal.App.4th 374, 378.) 'Although the law protects innocent purchasers and encumbrancers, "that protection extends only to those who obtained good legal title. [Citations.] . . . [A] forged document is void *ab initio* and constitutes a nullity; as such it cannot provide the basis for a superior title as against the original grantor." [Citations.]' (*Id.* at pp. 379–380.) A forgery includes a "'false making of a writing'" that "'falsely purports to be the writing of another.'" (*Wutzke v. Bill Reid Painting Service, Inc.* (1984) 151 Cal.App.3d 36, 41–42, italics omitted.) A deed that has been materially altered after it was signed is a forgery. (*Montgomery v. Bank of America* (1948) 85 Cal.App.2d 559, 563 ['Since the deed was altered without the knowledge, consent or approval of plaintiffs, after it had been signed by them and transmitted to the escrow holder, it

was void.']; (*Wutzke v. Bill Reid Painting Service, Inc.*, *supra*, at pp. 43–44 [a forged deed is void].)" (*La Jolla Group II v. Bruce* (2012) 211 Cal.App.4th 461, 477–478.)

Here, the evidence showed that the deed of trust and the promissory note on the Redwood Avenue property were altered after Clenney-Martinez signed them, but the escrow instructions had expressly authorized the alteration. The insertion of Garcia and Tirado's names as the lenders did not create a materially different deed of trust or promissory note than the documents that Clenney-Martinez signed. Inclusion of the lenders' names after Clenney-Martinez executed the documents, as authorized by Clenney-Martinez in the escrow instructions, did not make the documents void. The trial court's finding that the documents were valid is supported by substantial evidence that Clenney-Martinez was aware of the nature of the documents that she was signing and intended to obtain a loan of $375,000, from a specific lender subsequently identified, secured by the Redwood Avenue property.

Clenney-Martinez's claims for cancellation of the deed of trust and quiet title required finding the deed of trust to be void. Because the trial court's finding that the deed of trust was not void is supported by substantial evidence, we conclude that the court properly entered judgment in favor of Garcia and Tirado on the claims for cancellation of the deed of trust and quiet title as well.

Financial Code Violations

Clenney-Martinez contends that the trial court's findings in favor of Garcia and Tirado on her claim for violation of sections 4970 and 4973 are not supported by substantial evidence. We disagree. There was no evidence that Clenney-Martinez's loan was a "covered loan" under the Financial Code.

"'Predatory lending' is a term generally used to characterize a range of abusive and aggressive lending practices, including deception or fraud, charging excessive fees and interest rates, making loans without regard to a borrower's ability to repay, or refinancing loans repeatedly over a short period of time to incur additional fees without any economic gain to the borrower. Predatory lending is most likely to occur in the rapidly growing 'subprime' mortgage market, which is a market generally providing access to borrowers with impaired credit, limited income, or high debt relative to their income. Mortgages in this market tend to be in smaller amounts, and with faster prepayments and significantly higher interest rates and fees, than 'prime' mortgages." (*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1244 (*American Financial*).)

"In 2001, California enacted legislation to combat predatory lending practices that typically occur in the subprime home mortgage market. (Fin. Code, §§ 4970–4979.8 (Division 1.6).)" (*American Financial*, *supra*, 34

Cal.4th at p. 1244, fns. omitted.) Division 1.6 applies to a "covered loan," which is defined as a "consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association in the case of a mortgage or deed of trust," and one of two conditions are met. (§ 4970, subd. (b); see also *American Financial*, *supra*, 34 Cal.4th at p. 1246 [stating the conforming loan limit was $250,000].) "A 'consumer loan' is defined as 'a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit.' (§ 4970, subd. (d).) A consumer loan does not include a bridge loan, a reverse mortgage, an open line of credit as defined by federal regulation, or a 'consumer credit transaction that is secured by rental property or second homes.' (§ 4970, subd. (d).)" (*American Financial*, *supra*, 34 Cal.4th at p. 1246, fns. omitted.)

"Division 1.6 contains numerous prohibitions and limitations with respect to covered loans. For example, a person who originates covered loans shall not (1) 'make a covered loan that finances points and fees in excess of' the higher of $1,000 or 6 percent of the original principal balance, exclusive of points and fees (§ 4979.6); (2) 'make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer . . . will be able to make the scheduled payments to repay the

obligation based' on specified factors (§ 4973, subd. (f)(1))." (*American Financial*, *supra*, 34 Cal.4th at p. 1246.) In addition, as Clenney-Martinez raises on appeal, a covered loan shall not: (1) provide a payment schedule at origination, if the loan term is five years or less, "with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan" (§ 4973, subd. (b)(1)); (2) "contain a provision for negative amortization such that the payment schedule for regular monthly payments causes the principal balance to increase, unless the covered loan is a first mortgage and the person who originates the loan" makes an appropriate disclosure (*id.* at subd. (c)); (3) "contain a provision that increases the interest rate as a result of a default" except under certain circumstances (*id.* at subd. (e)); and (4) be made without seven paragraphs of disclosures specified in section 4973, subdivision (k)(1).

In this case, the loan did not meet the definition of a "covered loan" under section 4970. A consumer loan is a credit transaction secured by real property used or intended to be occupied as the consumer's principal dwelling. The evidence in this case was clear that the Redwood Avenue property was not Clenney-Martinez's principal dwelling. She testified that when she applied for the loan, she lived in Crestline and intended to continue living there. The Redwood Avenue property was uninhabitable because of the condition of the property, and there was no evidence that when the loan was made, she used or intended to occupy the

Redwood Avenue property as her principal dwelling. Clenney-Martinez did not establish that she received a "covered loan" within the meaning of section 4970.

DISPOSITION

The judgment is affirmed. Respondents Richard A. Garcia and Cynthia M. Tirado are awarded their costs on appeal.

MOOR, J.

We concur:

RUBIN, P. J.

BAKER, J.